Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

BOOKS AND PERIODICALS.

MEASURE OF REINSURER'S LIABILITY. — It may be laid down broadly that a contract of insurance is a contract to indemnify for actual damage suffered. Reinsurance, on the other hand, has been considered as a contract of 'indemnity for liability,' not for actual loss. EMERIGON, Meredith's ed., 1850, ch. 8, § 14; 1 JOYCE, INS., § 134; *Hone* v. *Mutual, etc., Ins. Co.*, 1 Sandf. 137. This doctrine has been supported in a recently published article which states that "the measure of [the reinsurer's] indemnity payment is the insurer's liability at the time of such payment." *The Contract of Reinsurance*, by W. R. Vance, 7 Va. L. Reg. 669 (Feb. 1902). Although this proposition is almost universally accepted it has been contended, not without some show of reason, that reinsurance as well as simple insurance is essentially indemnity, and that the reinsurer therefore should have to pay to the insurer only his actual pecuniary loss. If this latter rule be applied to cases where the insurer has become bankrupt it is evident that, on payment of a dividend to the insured by the bankrupt, a valid claim for that amount arises against the reinsurer. When that amount is collected it becomes in turn an asset from which a dividend must be paid to the insured. Then consequently another claim arises against the reinsurer, and so on *ad infinitum*. See *Philadelphia, etc., Ins. Co.* v. *Fame Ins. Co.*, 9 Phila. 292.

To avoid the necessity — under the 'indemnity for loss' theory — of successive settlements or calculations, a formula, the principle of which has been suggested in certain suretyship cases, might prove useful.

Let a = total liabilities of the bankrupt insurer.
b = his liability to the insured whose risk has been reinsured.
c = assets of the insurer exclusive of his claim upon the reinsurer.

Then $\frac{b}{a}$ = proportion of assets due insured on each distribution, and $\left(\frac{b}{a}\right)c$ = amount due insured on the first distribution and therefore the amount for which the insurer has a claim upon the reinsurer. Of this sum the insured should receive his proportionate part, which is $\frac{b^2c}{a^2}$. This in turn gives rise to a further claim upon the reinsurer. Hence, the series representing the final amount which the insured should receive from, and which the reinsurer should pay to, the insurer, is the geometrical progression $\frac{bc}{a} + \frac{b^2c}{a^2} + \frac{b^3c}{a^3}$ etc. The sum of this progression is represented by the formula $S = \frac{bc}{a-b}$. For example, if $a = \$100{,}000$, $b = \$10{,}000$, and $c = \$50{,}000$, then the reinsurer's liability would be $\frac{10{,}000 \times 50{,}000}{100{,}000 - 10{,}000}$, which resolves into $5555.56. *Cf.* 14 HARV. L. REV. 547.

If reinsurance means indemnity for actual pecuniary damage, unquestionably the above formula works out exact and immediate justice. But if reinsurance means liability to pay to the insurer the whole claim of the insured, irrespective of the insurer's ability to pay that claim in full, clearly the formula is inapplicable. Which of these views is preferable in a particular case is largely a question of interpretation. If the parties intended the insurer to get back only what he paid out, and if his only motive was to prevent loss to himself, the former view must be correct. If, on the other hand, they intended the reinsurer to become liable for the full amount from the moment of loss, and if the insurer reinsured chiefly to strengthen his financial position, then the latter doctrine should prevail. Legal analogies favor the one; the courts have accepted the other.